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Nonresident Withholding Exemption Certificate for Real Estate Sales (For use by sellers of California real estate)

590-RE

File this form with your withholding agent or buyer.

Name _____

Address (number and street) _____

Daytime telephone number _____

() _____

City _____

State _____

ZIP code _____

Complete the appropriate line:

Individuals – Social security number _____

Corporations – California corporation number (issued by Secretary of State) or F.E.I.N. _____

Partnerships, Estates, Irrevocable Trusts and Tax-Exempt Entities – F.E.I.N. _____

Limited Liability Company – Secretary of State file number _____

Note: Failure to provide your identification number will render this certificate void.

To _____

(Withholding Agent or Buyer)

Certificate of Residency — Individuals: Under penalties of perjury, I hereby certify that I am a resident of California and that I reside at the address shown above. See Side 2 for the definition of a resident.

Signature _____ Date _____

Certificate of Principal Residence — Individuals: Under penalties of perjury, I hereby certify that the California real property located at _____ was my principal residence within the meaning of IRC Section 1034. See Side 2 for the definition of a principal residence.

Signature _____ Date _____

Certificate of Residency of Deceased Person — Estates: Under penalties of perjury, I hereby certify as executor of the above-named person's estate that the decedent was a California resident at the time of death.

Name of executor (type or print) _____

Signature _____ Date _____

Corporations: Under penalties of perjury, I hereby certify that the above-named corporation has a permanent place of business in California at the address shown above or is qualified to do business in California. See Side 2 for the definition of permanent place of business.

Name and Title (type or print) _____

Signature _____ Date _____

Partnerships: Under penalties of perjury, I hereby certify that the above-named entity is a partnership and that the recorded title to the property is in the name of the partnership.

Name and Title (type or print) _____

Signature _____ Date _____

Limited Liability Companies (LLC): Under penalties of perjury, I hereby certify that the above named entity is an LLC and that the recorded title to the property is in the name of the LLC.

Name and Title (type or print) _____

Signature _____ Date _____

Tax-Exempt Entities and Nonprofit Organizations: Under penalties of perjury, I hereby certify that the above-named entity is exempt from tax under California or federal law.

Name and Title (type or print) _____

Signature _____ Date _____

Irrevocable Trusts: Under penalties of perjury, I hereby certify that at least one trustee of the above-named irrevocable trust is a California resident.

Name and Title (type or print) _____

Signature _____ Date _____

For Privacy Act Notice, see form FTB 1131 (individuals only).

Instructions for Form 590-RE

Nonresident Withholding Exemption Certificate for Real Estate Sales

Reference in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 1993**, and to the California Revenue and Taxation Code (R&TC)

General Information

A Purpose of Form

Use Form 590-RE to obtain an exemption from withholding for the sale of California real estate. The completed Form 590-RE should be presented to the buyer or other withholding agent and retained in their records for a period of five years following the close of the transaction. The buyer will be relieved of the withholding requirements if the buyer relies in good faith on a completed and signed Form 590-RE.

B Law

R&TC Section 18662 requires withholding of income (or franchise) tax when California real estate is sold by a nonresident.

C When Should this Form be Used

The certifications on Side 1 should be completed when:

- **The seller is a California resident on the date escrow closes.** Residents of California who have an out-of-state address to which funds are disbursed will need to complete Form 590-RE to be exempt from withholding. Form 590-RE will not become invalid if the seller moves out of California after the close of escrow.
- **The property meets the definition of principal residence under IRC Section 1034 at the time escrow closes.** Form 590-RE can be signed even if you do not plan to purchase a new home or if the purchase price of your new home is less than the sales price of your old home. Recognition of this gain in the year of sale or in subsequent years will be taxable to California and must be reported on a California tax return.
- **The seller is a California estate.** For withholding purposes, an estate is considered a California estate if the decedent was a California resident at the time of death. Estates are required to withhold on distributions of California source income to their nonresident beneficiaries.
- **The seller is a corporation that has a permanent place of business in California immediately after the transfer.**
- **The seller is a partnership and the recorded title to the property is in the name of the partnership.** A partnership may be required to withhold on distributions of California source income to nonresident partners. For more information get FTB Pub. 1017, Nonresident Withholding – Partnership Guidelines.
- **The seller is an LLC and the recorded title to the property is in the name of the LLC.** An LLC may be required to withhold on distributions of California source income to nonresident members. For more information get FTB Pub. 1017.
- **The seller is exempt from tax under either California or federal law.** For withholding purposes, this includes the insurance companies, IRAs and pension and profit sharing plans.

- **The seller is a California trust.** For withholding purposes, an irrevocable trust is considered a California trust if at least one trustee is a California resident. Irrevocable trusts are required to withhold on distributions of California source income to their nonresident beneficiaries.

Note: This applies only to irrevocable non-grantor trusts. Irrevocable trusts cannot be revoked by the grantor. The grantor is the person(s) who transferred (granted) assets to the trust. An irrevocable trust is also called a non-grantor trust because the trust **does not** have a provision to allow the grantor to revoke the trust. A revocable or grantor trust **does** have a provision allowing the grantor to revoke the trust and take back the assets. The grantor of a grantor trust shall be treated as the seller of real estate owned by such a trust. Therefore, if the seller is a revocable or grantor trust and one or more of the grantors is a nonresident, withholding is required. If all of the grantors of a revocable or grantor trust are residents, no withholding is required.

D Requirement to File a California Return

A completed Form 590-RE exempts the seller from withholding but does not eliminate the requirement to file a California tax return and pay the tax due.

E Who is a Resident

A California resident is every individual who is in California for other than a temporary or transitory purpose or any individual domiciled in California who is absent for a temporary or transitory purpose.

An individual domiciled in California who is absent from California for an uninterrupted period of at least 546 consecutive days under an employment-related contract is considered outside California for other than a temporary or transitory purpose. This does not apply if an individual has income from stocks, bonds, notes or other intangible personal property in excess of \$200,000 in any taxable year in which the employment-related contract is in effect.

A spouse who is absent from California for an uninterrupted period of at least 546 days to accompany a spouse under an employment-related contract is considered outside of California for other than a temporary or transitory purpose.

Sellers who are uncertain of their residency status can get assistance in determining their residency status by calling the Franchise Tax Board Information Center at the numbers listed below:

From within the United States,	
call	1-800-852-5711
From outside the United States,	
call	1-916-845-6500
For hearing impaired with TDD,	
call	1-800-822-6268

Sellers may also get FTB Pub 1031, Guidelines for Determining Resident Status, for more information.

F What is a Principal Residence

Usually, the home in which you live is your principal residence. If you have more than one home, only the sale of your main home qualifies as a sale of a principal residence. If you have two homes and live in both of them, the main home is the one lived in most of the time. A mobile home, houseboat, cooperative apartment, or condominium can also be a principal residence.

Property may qualify as your principal residence even if you temporarily rent it out while it is in the process of being sold, as long as it is rented out only as a matter of convenience or for another nonbusiness purpose. IRC Section 1034 does not contain a bright-line test for determining what is considered temporary. In federal case law on this subject, the Tax Court considered the facts and circumstances of each case, including the intent of the seller, to determine if the property met the definition of principal residence at the time of sale. Generally, if the property is rented out for less than a year while it is on the market, it will still be considered a principal residence for withholding purposes. You should evaluate your factual situation, the law, and applicable federal case law to determine if the property qualifies as your principal residence within the meaning of IRC Section 1034. For more information, get Federal Publication 523, Selling Your Home.

G What is Not a Principal Residence

The following are **not** principal residences under IRC Section 1034:

1. Rental property.
2. Part of home used for business.
3. Vacant land.
4. Vacation home or second home.

Withholding is required on sales of these types of properties unless another withholding exception is met or a waiver of withholding is obtained. Get Form 597-A, Nonresident Withholding Waiver Request for Real Estate Sales, for more information.

H What is a Permanent Place of Business

A corporation has a permanent place of business in this state if it is organized and existing under the laws of this state or if it is a foreign corporation qualified to transact intrastate business by the California Secretary of State's Office. A corporation which has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in this state only if it maintains a permanent office in this state which is permanently staffed by its employees.

For more information contact:

Franchise Tax Board
Withhold at Source Unit
P.O. Box 651
Sacramento, CA 95812-0651
Telephone: (916) 845-4900
FAX: (916) 845-4831